
GAO

United States General Accounting Office
Office of General Counsel

May 1994

**Digests of Decisions
of the Comptroller
General of the
United States**

Vol. V, No. 8

For sale by the Superintendent of Documents,
U.S. Government Printing Office, Washington, D.C. 20402

Current GAO Officials

Comptroller General of the United States
Charles A. Bowsher

Deputy Comptroller General of the United States
Vacant

Special Assistant to the Comptroller General
James F. Hinchman

General Counsel
Robert P. Murphy (Acting)

Deputy General Counsel
Vacant

Contents

Preface	iii
Table of Decision Numbers	iv
<hr/>	
Digests	
Appropriations/Financial Management	1
Civilian Personnel	3
Military Personnel	9
Procurement	11

Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S.C. § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition In Contracting Act, Pub. L. No. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by file number and date, e.g., B-248928, Sept. 30, 1992. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies and in annual volumes. Decisions in these volumes should be cited by volume, page number, and year issued, e.g., 71 Comp. Gen. 530 (1992).

Table of Decision Numbers

	Page		Page
B-240555.3, May 16, 1994	6	B-254497.2, B-254497.3, May 20, 1994	24
B-245654.3, May 17, 1994	23	B-254670.4, May 3, 1994	14
B-248176.3, May 2, 1994	11	B-254822, May 23, 1994	29
B-250051, May 23, 1994***	7	B-254837, May 27, 1994	8
B-250724, May 2, 1994***	3	B-254863.3, May 9, 1994	18
B-251140.5, May 17, 1994	23	B-254997, May 16, 1994	6
B-251758.5, B-251758.6, May 19, 1994	23	B-255091, May 18, 1994***	10
B-252529.2, May 5, 1994***	5	B-255193.2, May 25, 1994	31
B-252550.3, May 27, 1994	32	B-255448.2, May 3, 1994	
B-252758.3, May 20, 1994	24	REDACTED VERSION	14
B-252879.4, May 25, 1994	30	B-255512, May 4, 1994***	9
B-253455.3, B-253455.4, May 10, 1994	19	B-255677.3, May 13, 1994	21
B-253501.8, May 31, 1994	34	B-255699, May 9, 1994***	9
B-253614.6, B-253614.7, May 23, 1994 REDACTED VERSION	27	B-255719.2, May 11, 1994	
B-253740.2, May 27, 1994		REDACTED VERSION	20
REDACTED VERSION	32	B-255741.2, B-255741.3, May 10, 1994	19
B-254086, May 2, 1994	1	B-255767, May 2, 1994	4
B-254218, May 26, 1994	2	B-255777.2, May 9, 1994	18
B-254229.2, May 3, 1994	13	B-255792, May 9, 1994***	9
B-254242.2, B-254242.3, May 3, 1994	13	B-255822, May 17, 1994***	6
B-254377.2, May 20, 1994	24	B-255824, May 23, 1994***	7
B-254394.2, May 27, 1994	33	B-255829.3, May 5, 1994	16
B-254397.11, B-254397.12, May 23, 1994***	28	B-255988, May 31, 1994	10
		B-256041, May 3, 1994	15
		B-256062, May 2, 1994	11
		B-256066, May 5, 1994	16

***(notes published decisions) Cite published decisions as 73 Comp. Gen.—

Table of Decision Numbers

	Page		Page
B-256072, B-256072.2, May 6, 1994	17	B-256233, May 12, 1994	5
B-256075, B-256206, May 2, 1994 REDACTED VERSION	11	B-256240, May 27, 1994	33
B-256079, May 5, 1994	17	B-256242, May 31, 1994	34
B-256126, May 4, 1994	5	B-256243, May 12, 1994	20
B-256164, May 19, 1994 REDACTED VERSION	23	B-256244, May 31, 1994	34
B-256171, May 19, 1994	24	B-256245, May 24, 1994	30
B-256174, <i>et al.</i> , May 16, 1994	21	B-256251, May 31, 1994	35
B-256175, May 16, 1994	22	B-256294, May 13, 1994	21
B-256178, May 12, 1994	20	B-256313.3, B-256313.5, May 9, 1994	18
B-256179, May 20, 1994	26	B-256366, May 12, 1994	20
B-256184, <i>et al.</i> , May 3, 1994	1	B-256407, May 27, 1994	33
B-256189, B-256189.2, May 23, 1994	29	B-256473, May 23, 1994	8
B-256190, May 23, 1994	29	B-256497, May 2, 1994	1
B-256210, May 16, 1994	22	B-256586, B-256586.2, May 9, 1994	18
B-256219, B-256219.2, May 25, 1994	31	B-256758, May 2, 1994	12
		B-257302, May 23, 1994	30

Overruled, Modified and Distinguished

	Page
B-249457, Mar. 31, 1993	7
57 Comp. Gen. 389	7
57 Comp. Gen. 441	7
67 Comp. Gen. 247	7
68 Comp. Gen. 681	7
B-250051, May 23, 1994, 73 Comp. Gen. 157	7

Appropriations/Financial Management

B-254086, May 2, 1994

Appropriations/Financial Management

Budget Process

- Data centers
- ■ Funding
- ■ ■ Statutory restrictions
- ■ ■ ■ Reporting requirements

Section 9047 of fiscal year 1993 DOD Appropriations Act prohibited the Defense Department's (DOD) implementation of consolidation plans for data processing centers, until 60 days after a report is submitted to the appropriations committees. GAO concludes that DOD's submission of a consolidation plan of data processing centers to the Base Realignment and Closure Commission, did not violate that section because such action cannot be considered implementation of a plan. GAO notes congressional criticism that the BRAC submission was made to avoid § 9047's funding restrictions and related reporting requirements.

B-256497, May 2, 1994

Appropriations/Financial Management

Budget Process

- Data centers
- ■ Funding
- ■ ■ Statutory restrictions
- ■ ■ ■ Reports requirements

Section 9047 of fiscal year 1993 DOD Appropriations Act prohibited the Defense Department's (DOD) implementation of consolidation plans for data processing centers, until 60 days after a report is submitted to the appropriations committees. GAO concludes that DOD's submission of a consolidation plan of data processing centers to the Base Realignment and Closure Commission, did not violate that section because such action cannot be considered implementation of a plan. GAO notes congressional criticism that the BRAC submission was made to avoid § 9047's funding restrictions and related reporting requirements.

B-256184, *et al.*, May 3, 1994

Appropriations/Financial Management

Claims By Government

- Repayment plans
- ■ Terms

The Federal Claims Collection Standards, 4 C.F.R. § 102.11, express a strong preference that agencies strive to limit installment repayment agreements to periods of three years or less, but a longer period of time may be negotiated when such is merited by the facts and circumstances of the particular case.

B-254218, May 26, 1994

Appropriations/Financial Management

Accountable Officers

■ Certifying officers

■ ■ Liability

■ ■ ■ Illegal/improper payments

Since certifying officer's account has been settled by operation of law, 31 U.S.C. § 3526(c), Forest Service may not pursue collection against him for his erroneous payment, and we need not consider his request for relief from liability.

Civilian Personnel

B-250724, May 2, 1994***

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Eligibility
- ■ ■ ■ Distance determination

Transferred employee is not entitled to payment of temporary quarters subsistence expenses (TQSE) since the distance between his new official station and his old residence is not more than 40 miles greater than the distance between his old residence and his old official station, as required by the Federal Travel Regulation. This mileage limitation has the force and effect of law and may not be waived in any individual case.

Civilian Personnel

Relocation

- Household goods
- ■ Actual expenses
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Permanent duty stations
- ■ ■ ■ Distance determination

An employee who was transferred between duty stations located 41 miles apart, under orders providing for transportation and temporary storage of household goods utilizing the actual expense (GBL) method. The agency paid the carrier directly for such services, including 90 days of temporary storage and movement into and out of storage. Subsequently, the agency decided that the storage should not have been authorized because of the short distance involved and seeks collection from the employee for the costs. Since there is no regulatory, short-distance limitation in the FTR precluding temporary storage reimbursement, and since such storage was authorized and arranged by the agency, there is no legal basis to retroactively assess the costs against the employee.

Civilian Personnel

Relocation

- **Household goods**
- ■ **Actual expenses**
- ■ ■ **Reimbursement**
- ■ ■ ■ **Amount determination**

Transferred employee was authorized movement of household goods by the government under the actual expense (GBL) method, and most of his goods were moved by that method. However, he elected to move 840 pounds of household goods himself. He is entitled to be reimbursed his actual costs for moving the 840 pounds (gas, oil, etc.), but not in excess of what it would have cost the government to move the goods as part of a shipment of his goods in one lot by government bill of lading using a commercial carrier.

Civilian Personnel

Relocation

- **Miscellaneous expenses**
- ■ **Reimbursement**
- ■ ■ **Eligibility**
- ■ ■ ■ **Insurance**

Civilian Personnel

Relocation

- **Residence transaction expenses**
- ■ **Property titles**
- ■ ■ **Insurance premiums**
- ■ ■ ■ **Reimbursement**

Transferred employee may be reimbursed for the cost he paid of an owner's title insurance policy incident to his purchase of a residence only if such insurance was purchased by the employee as a prerequisite to obtaining financing or to the transfer of title, not as a matter of prudence for his own protection. In this case the record does not establish that the insurance was a prerequisite for obtaining financing or transferring title; therefore, it is not reimbursable.

B-255767, May 2, 1994

Civilian Personnel

Travel

- **Temporary duty**
- ■ **Determination**

Civilian Personnel

Travel

- **Temporary duty**
- ■ **Travel expenses**
- ■ ■ **Privately-owned vehicles**
- ■ ■ ■ **Mileage**

An employee was reassigned to a different duty station near his permanent duty station pending the disposition of an adverse personnel action. He was not issued permanent change-of-station orders, and other indices of the assignment indicated that it was temporary. Thus, it is considered a temporary duty assignment. In these circumstances it is within the agency's discretion to approve a mileage allowance for his commute to the temporary duty assignment and to limit the allowance to the mileage that exceeded his normal commute to his permanent station.

B-256126, May 4, 1994

Civilian Personnel

Relocation

- Household goods
- ■ Actual expenses
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

When a transferred employee is authorized to move his household goods under a government bill of lading (GBL), and he chooses to move himself, he is entitled to be reimbursed only for his actual expenses not to exceed what the government would have paid to move the goods by commercial carrier using the GBL method.

B-252529.2, May 5, 1994***

Civilian Personnel

Relocation

- Travel expenses
- ■ Reimbursement
- ■ ■ Amount determination
- ■ ■ ■ Circuitous routes

An employee of the Army transferred from Chicago to Germany with reemployment rights in Chicago upon completion of the assignment in Germany. Because of the impending closure of the base in Chicago, he elected transfer of his employment rights to Fort McPherson, Georgia. Upon his transfer from Germany directly to Fort McPherson, he traveled under an amended order authorizing travel by a circuitous route via Chicago to pick up an automobile. He may not be paid travel expenses in excess of those necessary to permit travel on a usually traveled route directly from Germany to Fort McPherson. The travel orders contained a specific provision stating that the employee would be responsible for additional costs via Chicago, and in any event, the Federal Travel Regulations require that the extra expense of travel via a circuitous route be borne by the employee.

B-256233, May 12, 1994

Civilian Personnel

Relocation

- Household goods
- ■ Commuted rates
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

An employee who transferred in the interest of the government, and later retransferred to his original duty station at his request, relinquished his right to any further transportation expenses under his first transfer orders. 27 Comp. Gen. 748 (1948). Employee is also not entitled to actual expenses for the storage of his household goods since he was authorized to use the commuted rate basis, and payment can only be made on that basis. *Michael A. Weedman*, B-226666, Nov. 23, 1987.

B-240555.3, May 16, 1994

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Property titles

Chief, Regulatory Policy Branch, GSA, is advised that GAO concurs in proposed amendments to Federal Travel Regulation (FTR), to be published as a final rule. The FTR amendments would permit 100 percent reimbursement of real estate expenses under 5 U.S.C. § 5724a(a)(4), in those cases where title to the residential property is held (1) in trust for the employee's benefit; (2) in the name of a financial institution pursuant to state law; (3) in the name of an accommodation party; (4) by the seller under a financial arrangement for periodic payments by the employee and transfer of title upon completion of the payments; and (5) jointly by the employee and others who are not members of the employee's immediate family under specified conditions. The employee will be fully compensated in those equitable title situations provided he or she furnishes acceptable documentation to the employing agency.

B-254997, May 16, 1994

Civilian Personnel

Compensation

- Rates
- ■ Determination
- ■ ■ Highest previous rate rule

An employee who had received two PMRS merit increases and two annual pay adjustments in a temporary promotion was returned to her permanent lower graded position and salary from which she was later permanently promoted to the higher grade. Upon the permanent promotion she received an appropriate pay increase, but not the level she had received under the temporary promotion. Her pay was correctly set because the agency had a policy of not using earnings under a temporary promotion as the "highest previous rate" for such promotions, which is a matter within the agency's discretion.

B-255822, May 17, 1994***

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Overseas personnel

An employee transferred to an overseas location in Korea, and sold his residence at his old duty station in Hawaii. He is entitled to reimbursement for real estate expenses on the basis of a statutory exception in 5 U.S.C. § 5724a(a)(4)(A) (1988), which provides reimbursement of real estate expenses when an employee returns from an overseas assignment to a different location in the United States. The employee (1) was notified that he would not be returning to his old duty station; (2) he sold his residence pursuant to such notice; (3) an agency regulation precluded his return; and (4) he returned from overseas to another duty station in the United States. *Robert M. Hooks*, B-249184, Mar. 5, 1993, 72 Comp. Gen. 130.

B-250051, May 23, 1994***

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Lunch breaks

Fire inspection employee worked 8-1/2-hour day, including one-half hour meal period. The employee is not entitled to Fair Labor Standards Act overtime for scheduled meal period for those days he was on annual or sick leave since he was not charged leave for the meal period. *Armitage v. United States*, 23 Cl. Ct. 483 (1991), *aff'd*, 991 F.2d 746 (Fed. Cir. 1993).

Civilian Personnel

Compensation

- Overtime
- ■ Claims
- ■ ■ Statutes of limitation

Provisions of the Portal-to-Portal Act of 1947, as amended, 29 U.S.C. § 255(a), imposing a limitation period of 2 years (3 years for willful violations) on a "cause of action" under the Fair Labor Standards Act (FLSA) will be applied in the settlement of pending and future FLSA claims filed with GAO by federal employees. Section 255(a) constitutes an exception to 31 U.S.C. § 3702(b)(1), which establishes a 6-year limit on filing claims with GAO "except . . . as provided by . . . another law." Prior GAO decisions that allowed a 6-year period for filing FLSA claims, 57 Comp. Gen. 441 (1978), 67 Comp. Gen. 247 (1988), and 68 Comp. Gen. 681 (1989), will no longer be followed. *Ford*, B-250051, was modified by sec. 640, Pub. L. No. 103-329 (dated Sept. 30, 1994), to allow a 6-year statute of limitations for any claim of a federal employee under FLSA filed before June 30, 1994.

B-255824, May 23, 1994***

Civilian Personnel

Relocation

- Travel expenses
- ■ Constructive expenses
- ■ ■ Eligibility
- ■ ■ ■ Spouses

Under Federal Travel Regulations, as amended in September 1991, employees who are members of the same family and who are transferred to the same duty station may elect to receive separate relocation benefits, regardless of when the employees actually relocate, but they may not be paid duplicate benefits. 41 C.F.R. § 302-1.8 (1993). *Michael L. Wineman and Kimberly L. Butterworth*, B-249457, Mar. 31, 1993, and 57 Comp. Gen. 389 (1978), distinguished. Therefore, each employee may be reimbursed temporary quarters subsistence expenses based on each's separate entitlement for actual expenses incurred, including each employee's claim for one-half their total lodging cost. Each also may be paid a separate full mileage allowance for driving separately to the new station. However, only one miscellaneous expense allowance is payable since only one residence was disestablished and reestablished.

B-256473, May 23, 1994

Civilian Personnel

Travel

- Temporary duty
- ■ Travel expenses
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

Employee on official travel exchanged government-furnished airline ticket for nonrefundable ticket for personal reasons, but was unable to use return portion of ticket due to exigencies of business. Employee is not entitled to reimbursement for full cost of return ticket she purchased in lieu of nonrefundable ticket, but she may be reimbursed for her actual expenses not to exceed the constructive cost of travel to the government.

B-254837, May 27, 1994

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

Incident to a transfer, an employee moved into temporary quarters near her new station and then took trips on weekends to several cities in the vicinity of her new and her old duty stations for which she claimed temporary quarters subsistence expenses. The employee may be reimbursed because the applicable regulations do not limit employees to a single location, provided the temporary quarters are located within reasonable proximity of the old or new official station. However, she may not be reimbursed for one weekend trip away from her new duty station that was unrelated to the transfer. 41 C.F.R. § 302-5.2(d) (1993).

Civilian Personnel

Relocation

- Travel expenses
- ■ Privately-owned vehicles
- ■ ■ Mileage

A transferring employee used her privately owned vehicle (POV) to travel to her new duty station and establish temporary quarters. The following weekend, she returned to her old duty station to pick up her children and transport them to her new duty station. Nothing in the Federal Travel Regulation specifies that the trip the employee may use for reimbursement purposes must be the one-way trip made to report for duty at the new duty station. Therefore, the agency may reimburse the employee for the second trip as her relocation travel for herself and her two children at the mileage rate specified for POV travel with three occupants. 41 C.F.R. § 302-2.3(b) (1993).

Military Personnel

B-255512, May 4, 1994***

Military Personnel

Pay

- Retirement pay
- ■ Annuities
- ■ ■ Claims
- ■ ■ ■ Statutes of limitation

Where payment of a Retired Serviceman's Family Protection Plan annuity on behalf of a mentally incapacitated adult is to be made to a court-appointed guardian, the time period for filing a claim for the annuity was satisfied through filing by the adult's custodian pending the guardian's appointment.

B-255699, May 9, 1994***

Military Personnel

Pay

- Dual compensation restrictions
- ■ Overpayments
- ■ ■ Debt collection
- ■ ■ ■ Waiver

A retired Navy officer was hired by the Department of Energy as a consultant with a limited appointment, and approximately 6 months later became a temporary full-time employee. Although his military retired pay was subject to reduction under the Dual Compensation law after 30 days of employment, reductions were not initiated until a few days before his status changed. Since he did not inform the Navy of his government employment promptly, he is not without fault in accepting the resulting overpayments, and his waiver request under 10 U.S.C. § 2774 is therefore denied.

B-255792, May 9, 1994***

Military Personnel

Leaves Of Absence

- Retired personnel
- ■ Lump-sum payments
- ■ ■ Highest previous rate rule

Where Board for the Correction of Naval Records changed officer's military records to show that he retired on June 1, 1992, in the rank of Admiral (O-10) rather than on July 1, 1992, at which time he had reverted to permanent rank of Rear Admiral (O-8) because of delay in confirmation of retirement at rank of Admiral, officer may have excess leave liquidated in accordance with his corrected record.

B-255091, May 18, 1994***

Military Personnel

Pay

■ Debt collection

■ ■ Set-off

Where erroneous payment of Basic Allowance for Quarters was waived because the officer was not at fault, it was improper to offset the amount of the officer's final settlement check for wages and unused leave to reduce the amount subject to waiver.

B-255988, May 31, 1994

Military Personnel

Pay

■ Overpayments

■ ■ Error detection

■ ■ ■ Debt collection

■ ■ ■ ■ Waiver

A former Army member's request for waiver under 10 U.S.C. § 2774 of her debt to the United States that arose when an extra paycheck was issued after her separation from the service and automatically deposited in her bank account is denied, because individual was not without fault in the matter, which bars waiver.

Procurement

B-248176.3, May 2, 1994

94-1 CPD ¶ 285

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ Administrative discretion

Protest that termination of protester's contract, under which protester was to satisfy 40 percent of agency requirement, and direction of all remaining orders to second, 60-percent requirements contractor, amounted to a modification improperly exceeding the scope of the second contract and which therefore should have been competed, is denied where contracts contemplated that second contractor would satisfy entire requirement in the event that, as here, the protester failed to supply inflator assemblies for automatic life preservers which were fit for the life saving purpose for which they were procured.

B-256062, May 2, 1994

94-1 CPD ¶ 286

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Justification
- ■ ■ ■ Sufficiency

Protest that solicitation unduly restricts competition by limiting award of contracts for medical services for prisoners to hospitals, as opposed to medical services corporations with access to hospitals, is denied where the record shows that contracting directly with hospitals will increase the agency's ability to ensure the safekeeping of prisoners as well as the safety of the general public.

B-256075, B-256206, May 2, 1994

94-2 CPD ¶ 71

Procurement

REDACTED VERSION

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Administrative discretion
- ■ ■ ■ GAO review

The evaluation of proposals and the resulting determination as to whether a particular offeror is in the competitive range are matters within the discretion of the contracting agency; our Office will not substitute its judgment for the agency's regarding the relative merits of proposals but, rather, will examine the agency's evaluation to ensure that the evaluation was reasonable and consistent with the stated evaluation criteria.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Prior contract performance**

Where protester's past performance is evaluated in part using information obtained by the agency through contact of protester-furnished references, contracting agency is permitted to rely on such information without allowing protester to rebut such information and without conducting an independent investigation as to the accuracy of the information obtained from the references.

Procurement

Bid Protests

- **Allegation substantiation**
- ■ **Lacking**
- ■ ■ **GAO review**

Protest raising same issues as those resolved in decision on companion protest by the same protester and involving the same agency is summarily denied as no useful purpose would be served by further consideration of the protest.

B-256758, May 2, 1994

94-1 CPD ¶ 287

Procurement

Sealed Bidding

- **Invitations for bids**
- ■ **Defects**
- ■ ■ **Evaluation criteria**

Procurement

Sealed Bidding

- **Low bids**
- ■ **Rejection**
- ■ ■ **Propriety**

Low bid which contained no descriptive literature for a brand name or equal component of an alternative bid item cannot be rejected as nonresponsive because the IFB failed to effectively require descriptive literature for evaluation purposes and the low bidder was bound to perform in accordance with the IFB.

Procurement

Contractor Qualification

- **Responsibility criteria**
- ■ **Organizational experience**

A solicitation requirement that bidders submit a list of related contracting experience does not constitute a definitive responsibility criterion, with which compliance is subject to the General Accounting Office's review.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where even assuming that prior finding of no prejudice was in error, same result—*i.e.*, denial of protest—would have been reached on alternative ground.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Pre-award samples
- ■ ■ ■ Waiver

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Samples

Where contracting officer had informed protester that in order to waive sample requirement in solicitation, he would require technical representative's written approval of samples submitted under previous solicitation, it was unreasonable for protester to rely on technical representative's oral representation that samples were acceptable without confirming that written approval had in fact been furnished to the contracting officer.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Protest that agency awarded contract based on a relaxation of solicitation's mandatory delivery requirements for awardee is denied where solicitation provided for these same delivery terms.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Where contracting agency calculated protester's transportation costs for price evaluation purposes—as provided for in solicitation which stated that agency would calculate transportation expenses based upon information submitted in proposal or, as here, based upon other offerors' information where offeror did not provide complete information—and did not consider protester's price to be unreasonable for the shipping distance from protester's location to delivery destination, agency was not required to conduct discussions on the protester's price.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

Protest challenging accuracy of agency's evaluation of protester's and awardee's transportation costs is denied where there is no evidence that protester has been prejudiced by alleged miscalculation since even if errors were corrected, protester still would not be the low offeror in line for award.

B-254670.4, May 3, 1994

94-1 CPD ¶ 292

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Where agency did not unduly delay taking corrective action in response to a clearly meritorious protest, protester is not entitled to the costs of filing and pursuing its protest.

B-255448.2, May 3, 1994 REDACTED VERSION

94-1 CPD ¶ 339

Procurement

Competitive Negotiation

- Contract awards
- ■ Initial-offer awards
- ■ ■ Discussion
- ■ ■ ■ Propriety

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Where request for proposals in a negotiated defense agency procurement advised offerors of the agency's intention to award a contract without discussions, agency properly could conduct discussions with competitive range offerors where discussions were believed necessary to determine the proposal most advantageous to the government.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Wage rates
- ■ ■ ■ Overtime

Where request for proposals (RFP) required offerors to state their policy on the use of uncompensated overtime and cognizant Defense Contract Audit Agency (DCAA) representatives told contracting agency officials that awardee's practice was not to use uncompensated overtime, agency reasonably accepted awardee's best and final offer statement confirming DCAA advice that its policy was not to use uncompensated overtime and, consistent with the RFP evaluation scheme, had no reason to conclude that awardee's performance would be degraded by using uncompensated overtime.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Time/materials contracts**
- ■ ■ ■ **Wage rates**

Protest alleging that awardee's proposed labor rates are less than the Service Contract Act wage rates for an indefinite quantity, time and materials contract is denied where the request for proposals required offers to propose labor rates on a fixed-price per hour basis, and awardee's offer did not show any intent to violate the Service Contract Act.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Cost realism**
- ■ ■ **Evaluation errors**
- ■ ■ ■ **Allegation substantiation**

Protest that agency failed to conduct a detailed cost analysis is denied where agency conducted a proper price analysis and request for proposals: solicited offers for an indefinite quantity, time and materials contract, with fixed hourly labor rates; did not require submission of cost or pricing data because it was anticipated that there would be adequate price competition and, in fact, adequate competition was attained; and did not require agency to perform a cost analysis, but instead, required only that contracting officer determine whether proposed prices were "fair and reasonable."

B-256041, May 3, 1994

94-1 CPD ¶ 293

Procurement

Competitive Negotiation

- **Use**
- ■ **Criteria**

Procurement

Special Procurement Methods/Categories

- **Federal supply schedule**
- ■ **Use**
- ■ ■ **Propriety**

Agency's issuance of a solicitation for audio cassette tapes is permitted, notwithstanding the existence of a mandatory Federal Supply Schedule (FSS) for the tapes, where the FSS cannot be used because the agency's tape requirements exceed the maximum order limitation of the FSS contracts.

Procurement

Specifications

- **Brand name specifications**
- ■ **Salient characteristics**
- ■ ■ **Sufficiency**

The salient characteristics of the brand name product stated in the solicitation are sufficient to advise prospective offerors of the agency's requirements for products equal to the brand name where the salient characteristics identify the essential functional features of the stated brand name product; the agency is not required to state the salient characteristics solely in terms of performance standards.

Procurement

Bid Protests**■ Dismissal**

Decision dismissing protest is affirmed where the protester on reconsideration does not show that decision contained errors of fact or law or present information not previously considered which would warrant reversal or modification of earlier decision.

Procurement

Competitive Negotiation**■ Offers****■ ■ Risks****■ ■ ■ Personnel****■ ■ ■ ■ Availability**

Agency reasonably determined that protester's proposal presented a risk of interrupted and delayed performance where protester proposed to hire seven employees (30 percent of the overseas work force) to perform the overseas portion of the contract and four of those seven employees did not have the required security clearance.

Procurement

Competitive Negotiation**■ Requests for proposals****■ ■ Defects****■ ■ ■ Evaluation criteria**

Where solicitation narrowly defined personnel qualifications evaluation subfactor in terms of years of experience and skill mix, security clearance status of proposed personnel was not reasonably related to personnel qualifications and procuring agency improperly evaluated security clearance status under that subfactor. Protester, however, was not prejudiced by the improper evaluation since the agency's concern with clearance status was properly considered under the personnel availability subfactor and no other factor considered in the award decision would change if the erroneous evaluation were corrected. Accordingly, the award decision would not change just because clearance status was improperly considered under the qualifications subfactor.

Procurement

Competitive Negotiation**■ Contracting officer duties****■ ■ Competitive system integrity**

Where, after learning of possible violation of the procurement integrity provisions of the Office of Federal Procurement Policy Act, contracting officer did not proceed with the procurement until authorized to do so by a higher-level official, and the head of the contracting agency decided, based on the facts known to him before award, that no violation had occurred, procuring agency properly followed the requirements of the Federal Acquisition Regulation regarding an agency's obligations in the face of a possible procurement integrity violation.

Procurement

Competitive Negotiation**■ Competitive advantage****■ ■ Non-prejudicial allegation**

Protest that awardee was given an unfair competitive advantage since awardee planned to remove portion of mast from ship at government pier in order to permit access to contractor's facility in order to perform contract is denied where nothing in the solicitation prohibited the use of a government pier to perform structural work when necessary to allow access into contractor's facility and protester was not prejudiced by awardee's proposed use of the government pier.

Procurement

Sealed Bidding**■ Invitations for bids****■ ■ Amendments****■ ■ ■ Acknowledgment****■ ■ ■ ■ Responsiveness**

Agency properly rejected protester's bid as nonresponsive where period of contract performance was extended by amendment and protester, while acknowledging receipt of amendment, did not include prices for the additional period of performance.

Procurement

Sealed Bidding**■ Bids****■ ■ Evaluation****■ ■ ■ Price reasonableness****■ ■ ■ ■ Administrative discretion**

Protest challenging price reasonableness determination with respect to awardee's bid for operations and maintenance contract is denied where determination was reasonably based on comparison with contract price for operations and maintenance services at another agency facility.

Procurement

Bid Protests**■ GAO procedures****■ ■ Protest timeliness****■ ■ ■ 10-day rule**

Protest that awardee's bid was nonresponsive is dismissed as untimely where allegation was first raised after protester's receipt of agency report and record shows that protester made no post-bid opening attempt to examine awardee's bid; protesters are required to act promptly after public bid opening to obtain information on bids received so that, upon learning of agency's award decision, protester will be aware of any alleged defect in winning bid.

Procurement

Contract Management

- Contract administration
 - ■ Convenience termination
 - ■ ■ Administrative determination
 - ■ ■ ■ GAO review
-

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification

Agency reasonably canceled invitation for bids and terminated award made thereunder, where it found that the specifications were biased in favor of the awardee and exceeded the agency's requirements so as to inhibit full and open competition.

B-255777.2, May 9, 1994

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Evidence sufficiency

Claims Group's settlement allowing carrier a refund of setoff for damage to a video cassette recorder (VCR) is reversed where evidence shows that the VCR was in working order shortly before being tendered to carrier; the damage is consistent with the VCR having been dropped; and the carrier has not proven that it was not responsible for the damage.

B-256313.3, B-256313.5, May 9, 1994

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protester did not diligently pursue relevant information that may reveal grounds of protest where protester, after lengthy period of inaction following notice of award, merely intervened as an interested party in another firm's protest and then filed its own protest following receipt of agency report submitted in response to the other firm's protest. Timeliness requirements cannot be governed by protester's purely discretionary decision of when and whether to intervene in another party's protest.

B-256586, B-256586.2, May 9, 1994

Procurement

Bid Protests

- Cooperative agreements
- ■ GAO review

Under the Competition in Contracting Act of 1984 and General Accounting Office's (GAO) Bid Protest Regulations, GAO will generally not review protests regarding the award of cooperative agree-

ments; GAO will only review timely protests that an agency is using a cooperative agreement where a procurement contract is required.

B-253455.3, B-253455.4, May 10, 1994

94-1 CPD ¶ 301

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Suspended/debarred contractors

A protester is an interested party to challenge the responsiveness of an awardee's bid despite the protester having been suspended at the time of award where the protester was not suspended until after bid opening and its suspension was lifted prior to the filing of the protest.

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Materiality
- ■ ■ Determination
- ■ ■ ■ Criteria

Protest alleging material unbalancing is denied where the awardee's bid cannot be materially unbalanced, since it was effectively the only eligible bid at the time of award.

B-255741.2, B-255741.3, May 10, 1994

94-1 CPD ¶ 302

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Foreign products
- ■ ■ Self-certification

Protest alleging that contracting activity improperly failed to investigate whether an awardee would comply with the Buy American Act is denied where the contracting activity had no information indicating that the product to be furnished was a foreign end product; it was therefore proper to rely on the offeror's self-certification without further investigation.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Contracting activity properly found that awardee's proposal substantially complied with solicitation requirement for inclusion of particular data in its proposal where information not provided was relatively minor and protester benefited from similar flexibility in the evaluation of its proposal.

Procurement

Contractor Qualification

- Contractor personnel
- ■ Misrepresentation

Protest is sustained where the solicitation required offerors to provide resumes for all personnel it intended to use in contract performance and a competitor offered incumbent personnel for whom it misrepresented that it had employment commitments, and this misrepresentation materially influenced the agency's evaluation of the competitor's proposal in selecting it for award.

B-256178, May 12, 1994**94-1 CPD ¶ 303**

Procurement

Specifications

- Minimum needs standards
- ■ Determination
- ■ ■ Administrative discretion

State Department reasonably required Jamaican guard services contractor to provide meals, maintain uniforms, and to utilize and maintain a designated training facility.

B-256243, May 12, 1994**94-1 CPD ¶ 307**

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Protest against award to higher-priced offeror is denied where awardee submitted technically more advantageous proposal, protester's proposed building and site failed to comply with solicitation requirements, and the cost to bring protester's building and site into compliance exceeded difference in prices.

B-256366, May 12, 1994**94-1 CPD ¶ 304**

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest against agency's rejection of protester's offer as unacceptable is denied where offer did not comply with payment terms set forth in the solicitation.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest that solicitation should have allowed for progress payments or advance payments is untimely where the issue is first raised after the closing date for receipt of proposals.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Cost savings

Award to lower-rated, lower-priced offeror was reasonably justified in accordance with the evaluation criteria that gave predominant weight to the technical factors, where the source selection official determined that the particular technical advantages offered by a higher-rated, higher-priced offer were not worth the significant associated cost premium when compared to the awardee's lower-priced, technically acceptable proposal.

B-256294, May 13, 1994

Procurement

Payment/Discharge

- Shipment
- ■ Tenders
- ■ ■ Terms
- ■ ■ ■ Interpretation

There is nothing inherently wrong in the fact that a released valuation provision in a government/carrier negotiated rate tender based carrier liability for (1) transit loss and damage on the lower of \$10/pound times the weight in the vehicle, actual value, \$50,000 per incident, or \$3,500 per box, and (2) damage in the carrier-operated Consolidation and Distribution Center on the lower of \$10/pound times the lost or damaged item's weight, and the other three amounts. The separate provisions are clear as written, and differences in released valuation depending on whether an article is in transit or in a warehouse are common. For transit damage, however, the weight should include only that attributable to the shipment (not the weight of other shipments that may happen to move on the vehicle), and only to the weight on that particular vehicle (which may be less than the full shipment weight).

B-256174, et al., May 16, 1994

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protest challenging technical evaluation is denied where the record demonstrates that the evaluation was reasonable and consistent with the solicitation evaluation criteria.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that awardee's proposal should have been rejected as technically unacceptable is denied where the agency evaluated both proposals which were submitted using the same flexible approach and the protester's proposal would have been technically unacceptable but for that flexible approach.

Procurement

Competitive Negotiation**■ Requests for proposals****■ ■ Terms****■ ■ ■ Compliance**

Procurement

Competitive Negotiation**■ Requests for proposals****■ ■ Terms****■ ■ ■ Shipment schedules**

Rejection of proposal which did not show compliance with the required delivery schedule was proper since delivery is considered to be a material term of a solicitation, and award cannot generally be made on the basis of a proposal that takes exception to a required delivery schedule.

Procurement

Contract Management**■ Contract administration****■ ■ Contract terms****■ ■ ■ Compliance****■ ■ ■ ■ GAO review**

Where request for proposals for paging system specifically allows the successful offeror 60 days after contract award to implement the system (including all components) and bring it into compliance at that time with the specifications, question of whether successful contractor in fact can or will successfully implement the system is a matter of contract administration, which the General Accounting Office does not review.

Procurement

Bid Protests**■ GAO procedures****■ ■ Protest timeliness****■ ■ ■ 10-day rule**

Where protest contains general allegations of improprieties which are only supported with detailed reasons in subsequent comments on an agency report, General Accounting Office will dismiss the protest grounds as untimely because our Bid Protest Regulations do not permit the unwarranted piecemeal development of protest issues.

Procurement

Bid Protests**■ GAO procedures****■ ■ Protest timeliness****■ ■ ■ 10-day rule**

Protest of other than apparent solicitation improprieties must be filed within 10 working days after the basis of the protest is known, or should have been known; when a protester initially files a timely protest and later supplements it with new and additional grounds of protest, the new allegations must independently satisfy our timeliness requirements.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Amount determination

Where protest of a solicitation, which contemplates the sole-source award of a contract for radars to be used in two entirely different applications with separate sole-source justifications, is sustained with regard to the proposed sole-source award for the radars to be used in one application and denied with regard to the radars to be used in the other application, the protester is entitled to recover protest costs only for portion of protest on which it was successful, inasmuch as the protest issues presented are distinct and severable.

B-251140.5, May 17, 1994

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Burden of proof

Decision that a carrier was liable for the full amount of transit damage because there was no evidence that a Service Agreement, which would have limited the carrier's liability, had been extended to the date of the damage is modified. The government has supplemented the record on reconsideration to support the carrier's contention that the Service Agreement was extended and, therefore, liability is limited in accordance with the Agreement's terms.

B-251758.5, B-251758.6, May 19, 1994

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Cost savings

Protest of award is denied where agency reasonably determined that awardee showed ability to perform contract requirements and firm was reasonably found to offer a reasonably priced, technically acceptable proposal under solicitation's general evaluation criteria.

B-256164, May 19, 1994 REDACTED VERSION

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Contract awards
- ■ ■ Propriety

Agency may not accept a front-loaded bid for layberth services where it was mathematically and materially unbalanced because the option year prices significantly declined from the base year bid prices, while the level of services required during each year of the contract remained constant, resulting in that mathematically unbalanced bid not becoming the lowest price to the government until the final month of a possible 5-year contract, thus creating doubt that the award will result in the lowest ultimate cost to the government.

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Contracting agency's decision to conduct procurement for critical military parts under noncompetitive procedures soliciting only known sources that have successfully manufactured the item (not the protester) was proper where the agency encountered a critical supply shortage.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Quantity estimates
- ■ ■ Requirements contracts

A solicitation's estimated order quantities which, as of the closing date for receipt of proposals and award selection date, were based upon the procuring agency's prior year's actual order quantities, were reasonably accurate representations of the agency's anticipated actual needs.

Procurement

Bid Protests

- Agency-level protests
- ■ Protest timeliness
- ■ ■ GAO review

Because Federal Acquisition Regulation (FAR) governing protests to the contracting agency does not define the term "filing," the date of receipt by the contracting agency is used by General Accounting Office (GAO) for the purpose of determining timeliness of protests consistent with GAO Bid Protest Regulations which define "filing" as receipt in the GAO.

Procurement

Bid Protests

- GAO procedures
- ■ Administrative reports
- ■ ■ Comments timeliness

Procurement

Competitive Negotiation

- Contract awards
- ■ Initial-offer awards
- ■ ■ Propriety
- ■ ■ ■ Corrective actions

Awardee's protest of decision to reopen competition, based on an amended solicitation, is untimely where filed 7 months after agency suspends award and requests revised proposals; in any event, where protester does not respond to argument in agency report that initial award was not made on a basis most advantageous to the government, General Accounting Office will not object to

agency's taking corrective action appropriate to remedy the impropriety, in view of agencies' broad discretion to take corrective action in such circumstances.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Firm whose proposal was included in the competitive range is not an interested party to protest agency's decision to modify solicitation instead of canceling it and issuing a new solicitation.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Information disclosure

Where agency decided to suspend award and reopen the competition based on an amended solicitation, protest by initial awardee that it was competitively prejudiced by release of information on its prior offer is denied where changes in the agency's technical requirements reflected in amended solicitation render that information of limited usefulness to competitors.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Descriptive literature

In view of agency's concern that offerors might issue catalogs with artificial product configurations created for the purpose of obtaining a favorable evaluation under the instant solicitation, and lack of evidence that there was any less restrictive cutoff date that would not have unreasonably delayed the procurement, General Accounting Office denies protest against agency's decision not to consider prices in commercial catalogs published after issuance date of draft amended solicitation.

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Materiality
- ■ ■ Determination
- ■ ■ ■ Criteria

Protest that agency failed in its duty to conduct proper advance planning and that solicitation will encourage unbalanced bidding is denied where incumbent protester's own data supports the agency's estimate that it will buy an increasingly greater percentage of higher performance workstations.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Party that was precluded from submitting a proposal by agency's decision not to consider prices in commercial catalogs published after issuance of draft amended solicitation is not an interested party to protest alleged ambiguities in scheme for determining price reasonableness.

B-256179, May 20, 1994

94-1 CPD ¶ 319

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protest of agency evaluation of technical proposals is denied where protester has not demonstrated that evaluation was unreasonable or inconsistent with the evaluation factors set forth in the solicitation.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Protest that agency improperly failed to conduct discussions with protester concerning its past performance is denied where, as part of the technical evaluation, offerors were required to furnish references concerning past performance information and should have been aware that these references might be contacted; information received from such sources is historical in nature and protester does not deny the validity of such information.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to conduct meaningful discussions with protester concerning three weaknesses in its proposal is denied where agency imparted sufficient information to afford offeror the opportunity to identify and correct two weaknesses, and where agency was not required to discuss the third weakness, a minor one in the protester's technically acceptable proposal.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Non-profit organizations
- ■ ■ Applicability

Protest that statutory preference is limited to nonprofit agencies or state-affiliated organizations is denied where statutory language does not expressly restrict application of the preference to such groups and does not prohibit application of the preference to for-profit organizations, and where

agency interpretation, consistent with the statutory language, that the preference is available to any organization with experience with youth is reasonable.

B-253614.6, B-253614.7, May 23, 1994

94-1 CPD ¶ 357

Procurement

REDACTED VERSION

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability
- ■ ■ ■ Point ratings

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Even though forms used by evaluation panel members to record point scores and narrative comments described an evaluation factor differently from the request for proposals (RFP), agency's technical evaluation was proper where the evaluation was conducted in a manner that was consistent with the RFP.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

In reevaluating proposals pursuant to General Accounting Office recommendation, contracting agency properly considered protester's unsatisfactory performance under previous contracts where: (1) prior experience was incorporated into several evaluation factors set forth in request for proposals; (2) protester cited the two previous contracts and associated references in its proposal; and (3) contracting officials learned of protester's unsatisfactory previous performances during preaward survey conducted after agency's original evaluation of proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

In evaluating proposals, contracting agency properly may consider evidence from sources outside proposals, and where traditional responsibility criteria are incorporated into technical evaluation factors set forth in request for proposals, agency's technical evaluation may involve consideration of offerors' capabilities as well as their proposed approaches and resources.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Prior contract performance
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Personnel experience

Where contracting agency reevaluates proposals pursuant to a General Accounting Office recommendation after contract has been awarded, contracting officials may properly consider awardee's performance on contract in period between award and reevaluation where request for proposals incorporated prior experience and contract performance into evaluation factors.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Where request for proposals stated that technical merit would be considered more important than cost or price, contracting agency properly determined that higher technically rated, lower-priced proposal represented the best value to the government and made award to that offeror.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation
- ■ ■ ■ Administrative discretion

Where solicitation contemplates award of a fixed-price contract, the contracting agency is not required to conduct a detailed cost or cost realism analysis.

B-254397.11, B-254397.12, May 23, 1994***

94-1 CPD ¶ 315

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Request that General Accounting Office (GAO) withdraw a finding of entitlement to costs is denied, where the basis for the request, a district court's granting of a motion for voluntary dismissal of a complaint, was not inconsistent with prior GAO decision.

B-254822, May 23, 1994

Procurement

Payment/Discharge

- Shipment costs
- ■ Additional costs
- ■ ■ Bills of lading
- ■ ■ ■ Ambiguity

When the carrier's claim for exclusive use depends on the wording of seal information contained on a government bill of lading continuation sheet, the government's liability is not clearly established if the GBL number on the continuation sheet varies with that contained on the first page of the copy of the GBL and with other carrier documents used to support the claim, and the carrier does not offer evidence which resolves the inconsistency.

B-256189, B-256189.2, May 23, 1994

94-1 CPD ¶ 320

Procurement

Sealed Bidding

- Two-step sealed bidding
- ■ Contract awards
- ■ ■ Propriety
- ■ ■ ■ Allegation substantiation

Award to offeror not specifically listed in *Commerce Business Daily* (CBD) notification of successful offerors under step one of two-step procurement is not improper where record shows that proposal submitted by awardee was determined to be technically acceptable; errors or omissions in CBD notification do not make competing firm ineligible for award if that firm submitted an acceptable proposal.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Terms
- ■ ■ ■ Compliance

Bid which offers warranty terms which do not conform to the solicitation's warranty terms is non-responsive.

B-256190, May 23, 1994

94-1 CPD ¶ 321

Procurement

Sealed Bidding

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

Agency determination allowing a bidder to correct a mistake—failure to include the cost of equipment—in its low bid prior to award was proper where the agency reasonably determined that clear and convincing evidence established both the existence of mistake and intended bid price, and the corrected bid remains low as corrected.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Omission

An unsigned standard form 1442 does not render a bid nonresponsive where the bid is accompanied by an executed certificate of procurement integrity and a signed bid bond that refers to and clearly identifies the bid.

B-257302, May 23, 1994

94-1 CPD ¶ 322

Procurement

Bid Protests

- GAO authority

Metropolitan Washington Airports Authority (MWAA) is not a federal agency subject to General Accounting Office's (GAO) bid protest jurisdiction under the Competition in Contracting Act. Although 49 U.S.C. App. § 2456(i) requires GAO to review MWAA contracts to determine whether they were awarded by procedures consistent with "sound Government contracting principles," GAO is to report to Congress on its findings. The provision clearly does not extend GAO's bid protest jurisdiction to cover MWAA procurements.

B-256245, May 24, 1994

Procurement

Socio-Economic Policies

- Small businesses
- ■ Disadvantaged business set-asides
- ■ ■ Preferences
- ■ ■ ■ Computation

Department of Defense's (DOD) use of a 10-percent evaluation preference for small disadvantaged business concerns (SDB) is a legally permissible implementation of 10 U.S.C. § 2323, which establishes a goal of 5 percent of the contract funds obligated each fiscal year for the award of contracts and subcontracts to SDBs.

B-252879.4, May 25, 1994

94-1 CPD ¶ 341

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Since the statutory and regulatory requirement for discussions with all competitive range offerors means that such discussions must be meaningful, equal and not misleading, there is no merit to argument that misleading discussion advice did not amount to a violation of statute or regulation.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request is based on an argument that was available to but not raised by the requesting party during consideration of the initial protest.

Procurement

Bid Protests

- GAO decisions
- ■ Recommendations
- ■ ■ Modification

Request for modification of corrective action recommending that agency reopen discussions and permit competitive range offerors to submit new best and final offers on basis that it places requesting party at a competitive disadvantage is denied where recommendation places parties in the position they would have been in if not for misleading discussions with protester.

B-255193.2, May 25, 1994

94-1 CPD ¶ 323

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the protester does not show that prior decision dismissing its protest contained any errors of fact or law or present information not previously considered that warrants reversal or modification of our decision.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

New and independent grounds of protest were properly dismissed as untimely where the later-raised issues did not independently satisfy the timeliness requirements of the General Accounting Office's Bid Protest Regulations; extension of time for filing comments on agency report does not waive the timeliness requirements for filing bid protests.

B-256219, B-256219.2, May 25, 1994

94-1 CPD ¶ 324

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Defects

Protest that dredging solicitation improperly lacks quantity estimates and unreasonably requires bidders to submit unit prices which are then multiplied by an adjustment factor to determine actual payment for different dredging conditions is denied where the agency is unable to prepare a reliable estimate of the type of work to be encountered (but provides several years' worth of historical information), and where the protester fails to show any risk associated with the use of multi-

pliers because the agency's numbers will adequately compensate bidders if, and when, they encounter more difficult dredging conditions.

Procurement

Bid Protests

■ GAO authority

Contention that solicitation provision requiring contractors to prepare their bids using equipment that will be able to navigate under certain fast-moving water conditions anticipates unsafe dredge operation is a matter beyond the General Accounting Office's bid protest jurisdiction.

B-252550.3, May 27, 1994

94-1 CPD ¶ 327

Procurement

Bid Protests

■ GAO procedures

■ ■ Interested parties

■ ■ ■ Direct interest standards

Protester is not an interested party to protest agency's alleged failure to award two contracts to small business concerns under a partial small business set-aside procurement where it would not be in line for award even if the agency had determined to make two such awards.

B-253740.2, May 27, 1994 REDACTED VERSION

94-2 CPD ¶ 30

Procurement

Competitive Negotiation

■ Competitive advantage

■ ■ Conflicts of interest

■ ■ ■ Allegation substantiation

■ ■ ■ ■ Lacking

Procurement

Competitive Negotiation

■ Offers

■ ■ Competitive ranges

■ ■ ■ Exclusion

■ ■ ■ ■ Administrative discretion

Protest that awardee should have been excluded from competing for a support services contract because it used the services of a former government employee in the preparation of its proposal is denied where there is no evidence that the former government employee had access to source selection information or other inside agency information that could have conferred an unfair competitive advantage on the awardee.

Procurement

Competitive Negotiation

■ Offers

■ ■ Cost realism

■ ■ ■ Evaluation errors

■ ■ ■ ■ Allegation substantiation

Protest that agency's cost realism analysis of protester's proposal was flawed is denied where the record shows that it was reasonably based.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that agency improperly evaluated protester's quality control plan is denied where the record shows that the evaluation was reasonable.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protest that agency conducted improper cost comparison is dismissed where protester is not an interested party, as it would not be in line for award even if the protest were sustained.

B-254394.2, May 27, 1994

94-1 CPD ¶ 333

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester has not shown that prior decision contained errors of fact or law, nor has it presented information not previously considered.

B-256240, May 27, 1994

94-1 CPD ¶ 328

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Absence

Where invitation for bids incorporated by reference the standard descriptive literature clause but did not specify what type of literature was required and for what purpose, the solicitation effectively did not require submission of descriptive literature; bid which did not include descriptive literature thus cannot be rejected as nonresponsive.

B-256407, May 27, 1994

94-1 CPD ¶ 334

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Use
- ■ ■ Administrative discretion

Contracting agency's determination not to set aside a procurement for small business concerns is reasonable where the agency concluded, based on the prior procurement history for the solicited services, that it could not reasonably expect to receive quotations from at least two responsible, small business concerns quoting a reasonable price.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

The General Accounting Office (GAO) denies a protester's request for reconsideration of a decision denying its protest because GAO found that there was no reasonable possibility that the protester was prejudiced by the agency's failure to reasonably evaluate proposals under the solicitation's best value evaluation scheme, where the record did not establish that the protester's substantially higher-priced proposal was technically superior to the lower-priced proposals and the protester failed to use information in the record to present credible and specific evidence that it was prejudiced.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Defects

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ GAO review

A protest that specifications are defective because the language used allegedly fails to adequately identify the agency's requirements is denied where the specifications plainly state the agency's requirements and the protest rests on nothing more than unreasonable and dubious allegations to the contrary.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Agency reasonably evaluated the protester's low-cost proposal as containing numerous weaknesses, such that the awardee's significantly higher-rated, higher-cost proposal was reasonably found to be worth the cost premium.

Procurement

Specifications**■ Minimum needs standards****■ ■ Competitive restrictions****■ ■ ■ Justification****■ ■ ■ ■ Sufficiency**

Protest alleging that pre-award operational capability test requirements for computer hardware and software were unduly restrictive of competition is denied where record establishes that testing requirements were reasonably limited to those necessary to assure compliance with specifications and interoperability with existing equipment at sites throughout the United States and Puerto Rico.

For:

Information on pending decisions: (202) 512-5436

Copies of decisions: (202) 512-6000

Request to be placed on mailing lists for OGC Publications: (202) 512-4501

Questions regarding this publication: (202) 512-4501

United States
General Accounting Office
Washington, D.C. 20548

Special Fourth Class Rate Postage & Fees Paid GAO Permit No. G100
--

Official Business
Penalty for Private Use \$300

Address Correction Requested
